IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

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WRIT PETITION NO : 4714 of 2005

Between:

1 Yamala John, S/o.Samuel, Cultivation,
Kapuluru Village, Naidupet Mandal R/o.Kapulur Village, Naidupet Mandal, Nellore.
2 P.Venkateswarlu, S/o.Karraiah,
Kapuluru Village, Naidupet Mandal R/o.Kapulur Village, Naidupet Mandal, Nellore.

..... PETITIONERS

AND

1 The District Collector, Nellore.
2 The Mandal Revenue Officer Naidupet Mandal, Naidupet, Nellore District.
3 Kapuluru Ranga Reddy S/o.Pulla Reddy,
R/o.Vasudevapalem Kapuluru Post, Naidupet Mandal, Nellore District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order, direction or writ, more particularly one in the nature of writ of Mandamus declaring the notice dt.26.2.2005 in Rc.B.327/04 issued by the 2nd respondent herein as illegal, arbitrary, without jurisdiction.

Counsel for the Petitioners : MR.V.SUDHAKAR REDDY

Counsel for the Respondent Nos.1 and 2: GP FOR REVENUE

The Court, at the stage of admission, made the following :

ORDER:

The petitioners were issued notices under Section 7 of the A.P. Land Encroachment Act (for short 'the Act'), directing them to show cause as to why they shall not be evicted from the land of one cent each in Sy.No.39 of Annamedu Village. It was alleged that the petitioners are in occupation of poramboke of Swarnamukhi river. Petitioners contend that both of them are former servants of one Mr.Madhusudhan Reddy, and their master had given them one cent each in his land in Sy.No.164-4 A/B, 165-2 and 166 of Kapuluru Village. They allege that the 3rd respondent intended to have a passage to his land from the land of Mr.Madhusdhan Reddy, and when he was not successful in securing the passage, he managed with the 2nd respondent in getting the impugned notices issued.

Heard the learned counsel for the petitioners, the learned Government Pleader for Revenue and Mr. Sai Gangadhar Chamarthy, learned counsel for respondent No.3.

No orders of eviction have been passed under Section 6 of the Act, against the petitioners, so far. They are issued a show cause notice under Section 7 of the Act, and they claim to have submitted the explanation. There is no reason to apprehend that the 2nd respondent would not consider the explanation submitted by the petitioners. Though extensive submissions are made, with reference to the identity of the land as well as the disputes between the 3rd respondent, on the one hand, and one Mr.Madhusudhan Reddy, on the other, this Court is not inclined to deal with the same, at this stage. If there is a dispute as to the very identity of the land, the 2nd respondent is under obligation to verify the same, decide the issue and record a definite finding, after examining the record. Even assuming that any order of eviction is passed against the petitioners, it is not as if, it is final. The petitioners can avail the remedy of appeal and their interest can certainly be protected.

Hence, the writ petition is disposed of with the following directions;

a. The 2nd respondent shall consider the explanation submitted by the petitioners including the one relating to the identity of the land, and pass appropriate orders, either dropping the proceedings against the petitioners or directing eviction under Section 6 of the Act.

b. In case, the 2nd respondent directs the eviction of the petitioners, such an order shall not be given effect to, for a period of four weeks from the date of service, and it shall be open to the petitioners to work out their remedies in appeal before the appellate authority.

There shall be no order as to costs.

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(L.NARASIMHA REDDY,J)

Date: 10-03-2005

Note: Office to issue c.c.

in three days.

(B/o.)

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To

1 The District Collector, Nellore.
2 The Mandal Revenue Officer Naidupet Mandal, Naidupet, Nellore District.

3 2 C.Cs. to the Government Pleader for Revenue, High Court ofA.P., Hyderabad. (O.U.T.)
4 2 CD copies